

(1961) 09 GUJ CK 0005
In the Gujarat High Court

Rathod Bhojaji Shantuji

APPELLANT

Vs

Pathan Nasirkhan Kesharkhan and Others

RESPONDENT

Date of Decision : 30-09-1961

Acts Referred:

Bombay Civil Courts Act, 1869 — Section 23, 24

Bombay Village Panchayats Act, 1958 — Section 15, 15, 15(1)

Citation : (1962) 3 GLR 803

Hon'ble Judges : M.R. Modi, J;J.M. Shelat, J

Bench : Division Bench

Judgement

J.M. Shelat, J.—This special Civil Application arises from an election application filed u/s 15 of the Bombay Village Panchayats Act 1958 the village Tundali situate in Mehsana Taluka has a Panchayat constituted u/s 9 of the Act and that Panchayat consists of 7 members. The village is divided into 3 wards. Ward No. 1 has two seats out of which one is reserved for Harijans. Ward No. 2 has two seats out of which one is reserved for women and ward No. 3 has 3 seats out of which one is reserved for women. In other wards there are four general seats two seats reserved for women and one seat reserved for Harijans.

On December 16 1960 a general election was held wherein the petitioner and respondents 1, 2 and 4 contested for the two general seats in ward No. 3. Respondents 3 and 5 contested for the seat reserved for women in that ward. Respondents 1 and 2 got 108 votes each while the petitioner and respondent No. 4 got 106 votes each. Respondents 3 and 5 who had contested the seat reserved for women got 104 votes each. Respondents 1 and 2 were declared elected for the two general seats in ward No. 3 but as there was a tie between respondents 3 and 5 a lot was drawn and as a result of the lot respondent No. 3 was declared duly elected. This result was declared on December 18 1960.

The petitioner thereafter filed an application being application No. 36 of 1960 challenging the validity of the election of respondents 1, 2 and 3. The application was filed before the Civil Judge (Senior Division) Mehsana who passed the

following endorsement:

Presented personally before me. The application is ordered to be registered. Issue notices to the opponents to show cause. Call for the ballot-boxes and other relevant papers.

Respondent No. 5 also filed an application being application No. 37 of 1960 questioning the election of respondents 1, 2 and 3. Three other applications were also filed before the Civil Judge (Senior Division) Mehsana challenging the election of the other persons declared to have been elected in that election.

It was contended by respondents 1, 2 and 3 that the petitioners application was not maintainable as the application had to be filed before the Civil Judge (Junior Division) and not before the Civil Judge (Senior Division) as laid down in Section 15 of the Bombay Village Panchayats Act. The learned Civil Judge (Senior Division) Mehsana upheld the contention and transferred the application to the Joint Civil Judge (Junior Division) for disposal according to law. While making that order the learned Civil Judge (Senior Division) observed that though a Joint Civil Judge (Junior Division) was appointed u/s 23 of the Bombay Civil Courts Act 1869 to assist the Civil Judge (Senior Division) it was clear that u/s 24 of that Act the jurisdiction of the Joint Civil Judge (Junior Division) extended to all original suits and proceedings of a civil nature wherein the subject matter did not exceed Rs. 10 0. He further observed that in his opinion even though the Civil Judge (Junior Division) was designated as a Joint Civil Judge (Junior Division) Mehsana he had ordinary jurisdiction and the fact that he could only try and dispose of cases which were transferred to him with a view to assist the Civil Judge (Senior Division) Mehsana it would not mean that he had no jurisdiction over other matters which were within his jurisdiction.

2. The order passed by the learned Civil Judge (Senior Division) Mehsana is entoneous as it is based on an incorrect reading of Section 15 of the Bombay Village Panchayats Act and Sections 23 and 24 of the Bombay Civil Courts Act 1869 Section 15(1) so far as is relevant provides that if the validity of an election of a member of a Panchayat is brought in question by any person qualified to vote at the election to which such question refers such person may apply in the Saurashtra area of the State and in the pre-reorganisation State of Bombay excluding the transferred territories to the Civil Judge (Junior Division) and if there be no Civil Judge (Junior Division) then to the Civil Judge (Senior Division) having ordinary jurisdiction in the area within which the election has been or should have been held for the determination of such question.

The question is whether at the time when the application was made there was a Civil Judge (Junior Division) having ordinary jurisdiction in Tundali Mehsana Taluka. It is clear that u/s 15(1) if there was no such Civil Judge (Junior Division) having ordinary jurisdiction in Tundali where the election took place then the application challenging that election must be filed before the Civil Judge (Senior Division). It is not in dispute that there is no Court presided over by a Civil Judge

(Junior Division) in the Mehsana Taluka who has ordinary jurisdiction in the village Tundali. Consequently all civil suits and proceedings have to be and are in fact filed in the Court of the Civil Judge (Senior Division) Mehsana which is the principal town of Mehsana Taluka and within which the village Tundali is situated. There being no Court of a Civil Judge (Junior Division) in Mehsana all such suits and proceedings have to be and are in fact filed in the Court of the Civil Judge (Senior Division). It is true that a Civil Judge (Junior Division) has been posted by the High Court at Mehsana as a Joint Civil Judge but that has been done with a view to assist the Civil Judge (Senior Division) there to dispose of the work filed in his Court. Being a Joint Judge he disposes of such suits and matters as are transferred to his file by the principal judge viz. the Civil Judge (Senior Division) Mehsana and which suits and matters are within his pecuniary jurisdiction. Being a Civil Judge (Junior Division) his peculiar jurisdiction is limited upto Rs. 10,000. It is thus clear that there is only one court in Mehsana town and that of the Civil Judge (Senior Division) who has u/s 24 of the Bombay Civil Courts Act 1869 jurisdiction to dispose of all original suits and proceedings of a civil nature whether of the value of Rs. 10,000 and above or below Rs. 10,000. There being sufficient quantity of work a Civil Judge (Junior Division) has been posted by the High Court only for the purpose of assisting him in the disposal of matters filed in that Court. But unlike some Taluka towns in that District Mehsana being also a District town there are in that town Courts of the District Judge the Assistant Judge and the Court of the Civil Judge (Senior Division) but as stated above there is no Court of a Civil Judge (Junior Division). As provided by Section 21 of the Bombay Civil Courts Act 1869 there shall be in each District so many civil Courts subordinate to the District Court as the State Government shall from time to time direct. u/s 22 the judges of such subordinate Courts are appointed by the State Government and are called Civil Judges. u/s 22A the State Government has to fix by a notification in the official gazette the territorial jurisdiction of each such Court and it can by a like notification alter from time to time the local limits of the ordinary jurisdiction of the Civil Judges. Section 23 provides that the Civil Judges shall hold their Courts at such place or places as the State Government may from time to time appoint within the local limits of their respective jurisdiction. For assisting a Civil Judge (Senior Division) the High Court may appoint to such Court one or more Joint Civil Judges who would dispose of such civil business as is referred to them and which is within their pecuniary jurisdiction. It is true that u/s 24 the jurisdiction of a Civil Judge (Junior Division) extends to all original suits and proceedings of a civil nature wherein the subject matter does not exceed in amount or value ten thousand rupees. Section 24 however merely specifies the jurisdiction of a Civil Judge (Junior Division). That section has nothing to do with the question arising u/s 15 of the Bombay Village Panchayats Act. A Civil Judge (Junior Division) who has been posted as a Joint Judge at a place where there is no Court of the Civil Judge (Junior Division) has no independent Court where suits and proceedings can be filed. Therefore he can dispose of only such work as is referred to him by the principal judge. Consequently it can not be said that the Joint Judge who is a

Civil Judge (Junior Division), has a Court at Mehsana wherein civil suits and other proceedings can be filed. The only Court where such work can be filed is the Court of the Civil Judge (Senior Division) which ordinarily would dispose of all work filed there as its jurisdiction extends to all original suits and proceedings of a civil nature. But as the High Court has appointed a Joint Judge who is in the Junior Division cadre the Civil Judge (Senior Division) can and does transfer to the Joint Judge such work that falls within the pecuniary jurisdiction of such a Joint Judge.

4. u/s 15 of the Bombay Village Panchayats Act 1958 the Civil Judge before whom an application challenging an election has to be filed is a persono designata is the Judge who has ordinary jurisdiction in the place where an election has been held. That Judge in Mehsana would be the Civil Judge (Senior Division). There being no Court there of a Civil Judge (Junior Division) where civil work can be filed the Civil Judge who has such jurisdiction being the Civil Judge (Senior Division) Mehsana it is he who is such a persono designata u/s 15 of the Act and therefore under that section it is he only who has jurisdiction to try an election application filed under the Act. Since it is he who has such jurisdiction in his capacity as a persono designata he cannot transfer an election application filed before him nor can he delegate his power to try such an application to another Judge. The order passed by the learned Civil Judge (Senior Division) was therefore an erroneous order and must be set aside.

The order passed by the learned Civil Judge (Senior Division) Mehsana dated 21st January 1961 is accordingly set aside. Rule made absolute and the learned Civil Judge (Senior Division) Mehsana is directed to try and decide Civil Misc. Application No. 36 of 1960 according to law. Respondents 2 and 3 shall pay to the petitioner costs of this petition fixed at Rs. 160/- inclusive of all out-of-pocket expenses incurred on behalf of the petitioner.